THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.4810 OF 2004

Between

E.Tirupem Reddy, S/o Nagi Reddy,

R/o Koratamaddi village, Gadivemula Mandal,

Kurnool District.

...PETITIONER

AND

The Deputy Superintendent of Police, Nandyal,

Kurnool District and others.

...RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

The instant writ petition is filed for writ of Mandamus declaring the first information report in crime No.11 of 2004 of P.S., Gadivemula, illegal and arbitrary and consequentially to set aside the same. In effect, the petitioner is seeking quashing of crime No.11 of 2004 registered under Sections 420, 506 of Indian Penal Code, 1860 (IPC) and Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (the Act, for brevity).

The third respondent herein is a person belonging to Scheduled Caste (Madiga). He lodged a complaint with the second respondent Police Station on 08.02.2004. In the said complaint, the third respondent made the following allegations. The petitioner took a promissory note from the complainant three years prior to date of occurrence promising to get a Jowar Crushing Machine from the Department of Agriculture. The petitioner failed to do so but did not return the bond in spite of repeated requests. On 07.02.2004, when petitioner was going through Donkadari (village pathway) in S.C.Colony at 10.00 a.m., the complainant accosted and asked why the petitioner failed to return the bond or the Jowar Crushing Machine. The petitioner retorted saying that the third respondent can complain anywhere he likes and while saying so he addressed the third respondent in vulgar language using the caste name in the presence of complainant's wife and one Nadam Yerranna. On the basis of said complaint, the crime was registered by second respondent.

The petitioner in the writ affidavit stated as follows. The third respondent executed a promissory note for a sum of Rs.29,000/-, which he borrowed for agricultural purposes but failed to pay the amount. The petitioner filed a suit being O.S.No.636 of 2002 on the file of the Court of the Principal Junior Civil Judge, Nandyal. The said suit was opposed by third respondent taking the same plea, but the trial Court decreed the suit on 13.02.2004 in favour of the petitioner. Therefore, the defence taken by the third respondent, which was also mentioned in the complaint with the Police, is false and untenable. Taking advantage of provisions of the Act, the third respondent concocted the complaint against the petitioner. The complaint does not make out any offence under Sections 420 or 506 of IPC and under Section 3(1)(x) of the Act. Even according to the allegation, the third respondent accosted the petitioner in Donkadari, which is not a public place and there was no public nor there was an intention of insulting the complainant. The allegation that there was Nadam Yerranna is false. There is no such person in Koratamaddi village as is evident from certificate issued by Mandal Revenue Officer. The complaint was filed against the petitioner in view of the suit filed by him.

The third respondent entered appearance and filed counter affidavit. The filing of the suit against the third respondent being O.S.No.636 of 2002 is denied. It is stated that the petitioner filed the said suit against one Boraka Moogenna. In E.P.No.307 of 2004, the petitioner mischievously sought attachment of third respondent's property. After receiving attachment warrants, the third respondent appeared before the Civil Court by filing E.A.No.1182 of 2004 for raising attachment and explained the

fraudulent and mischievous acts of the petitioner in executing the decree against the third respondent. The E.A., is still pending. The third respondent stated all the facts in his complaint before the police and the veracity of these can only be gone into in the regular trial before the competent Court. There is no substantial ground in support of the relief prayed in the writ petition. The petitioner initially filed Criminal Petition No.864 of 2004 to quash crime No.11 of 2004 but withdrew the same on 07.03.2005. Therefore, the writ petition is not maintainable.

Learned counsel for the petitioner, Sri E.Ayyappa Reddy, contends that the third respondent lodged the F.I.R., to defeat the decree obtained by the petitioner when the execution petition filed by the petitioner is pending. The third respondent filed E.A., to raise the attachment and could not get favourable orders. He filed the criminal case against the petitioner. Secondly, the learned counsel contends that according to the F.I.R., the petitioner blamed the third respondent using the caste name in a place which is neither public place nor can it be said in public view and that the element of intentionally insulting with a view to humiliate the third respondent is absent in F.I.R. According to the learned counsel, if the investigation is allowed to go on, the same would result in miscarriage of justice as no offence under Section 3(1)(x) of the Act is made out.

The learned counsel for the third respondent, Ms.Hema Jaiswal, contends that whether the defendant in the suit filed by the petitioner and the third respondent are same, whether the offence was committed in public view and whether the third respondent lodged F.I.R., as a counter blast the suit are all matters which have to be gone into by the criminal Court in regular trial and the same cannot be a ground for quashing the F.I.R.

In many cases filed before this Court under Article 226 of Constitution of India or under Section 482 of Code of Criminal Procedure, 1973 for quashing criminal case registered under Section 3(1)(x) of the Act, it is contended that the alleged insult or intimidation is not in a place within the public view and therefore the ingredients of crime are absent. If, on this question, the criminal case is to be quashed, there should be entire evidence before the Court to arrive at a definite conclusion with regard to the persons who are present when the complainant was intentionally humiliated by use of caste name as alleged.

In **Goluguri Ramakrishna Reddy v State of A.P.,** I have considered the meaning and purport of the phrase “in a place within the public view” appearing in Section 3(1)(x) of the Act. The term “public view” is and means any place where the public have access or public are not prohibited from visiting the place or going to such place. It is immaterial whether actually public were present at the time of commission of offence. Considering this aspect of the matter in a decision cited above, this Court laid down as under.

> The Act, as seen from the statement of objects and reasons, seeks to achieve the purpose of providing stringent measures and punishments for committing atrocities against members belonging to Scheduled Castes and Scheduled Tribes, which atrocities are generally perpetrated when these persons assert their rights, it would be very absurd to think that if a member

> of Scheduled Caste or Scheduled Tribe is insulted or intimidated with an intention to humiliate in a public place where there are no onlookers is not offence, but the same would be offence if any third person other than offender and the victim is present in a place. Such a thin line cannot be drawn while interpreting any of the clauses in Section 3(1) of the Act which by themselves are atrocities. The moment a member belonging to Scheduled Caste/Scheduled Tribe complains that the accused has insulted or intimidated him or her by using caste name, an atrocity is committed and that has to be dealt with in accordance with law provided in the Act as well as CrPC. Therefore, it is not possible to accept the submission that whenever offence under Section 3(1)(x) of the Act is purportedly committed in a secluded place or in a place where there is no "public" offence is not made out. This Court, however, hastens to add that this aspect of the matter has to be decided by the criminal Court conducting trial and it cannot be a ground for quashing the criminal case at the stage of investigation or prosecution.

In this case, as seen from the F.I.R., given by the third respondent on 08.02.2004, on 07.02.2004 at 10.00 a.m., the petitioner was going on the Donka road when the third respondent asked for Jowar Crushing Machine or return of the bond when the petitioner intimidated the third respondent by blaming the petitioner and his wife. That allegation would be sufficient, of course subject to proof, to attract the offence under Section 3(1)(x) of the Act. It is now well settled that in a writ petition for quashing F.I.R., this Court is not entitled to appreciate evidence nor can it find some reason or the other to quash the F.I.R., even though the allegations are made in the F.I.R., regarding commission of offence. The enquiry should be limited to reading the F.I.R., and all other things must wait. In **Zandu Pharmaceutical Works Limited v Mohd.Sharaful Haque**, the Supreme Court after reviewing the law in this regard summarized as under.

> Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power, which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule, which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law, which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section, which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified

by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action, which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

After perusing the F.I.R., this Court is not able to countenance the submission of the learned counsel for the petitioner that the case under Section 3(1)(x) of the Act or under Sections 420 or 506 of I.P.C., is not made out. It shall be open to the petitioner to raise all grounds before the criminal Court.

The petitioner approached this Court in March, 2004 and since then the proceedings in crime No.11 of 2004 have been stayed. Therefore, the second respondent should take up with the higher authorities for expeditious completion of investigation so that the charge sheet is filed immediately. If the petitioner is arrested in connection with Crime No.11 of 2004, he may move the special Court under the Act who shall release the petitioner on bail after obtaining adequate sureties.

The writ petition, with the above observations, is accordingly dismissed.

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(V.V.S.RAO,J)

.09.2005.

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